

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA SOUTHERN DIVISION

2019 MAY 23 P 1:48

Rocky Creek Peanut Farm LLC
Plaintiffs

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

vs.

* Case Number 1:19-cv-364

GEORGE ERVIN "SONNY" PERDUE, III *
UNITED STATES SECRETARY OF
AGRICULTURE, THE UNITED STATES
DEPARTMENT OF AGRICULTURE, *
DEFENDANT

COMPLAINT

1. Jurisdiction of the United States District Court of the Middle District of Alabama, Southern Division is invoked pursuant to 28 USCS 1331, Federal Question Jurisdiction, 7 USCS 6999 and 28 USCS 2412.

2. Rocky Creek Peanut Farm LLC, is the name of a farming business located in Houston County, Alabama referred to as "Rocky Creek" throughout the remainder of complaint. Those things made the basis of this complaint arise from activities occurring within the Middle District of Alabama, Southern Division.

3. Rocky Creek has received a favorable ruling from the United States Department of Agriculture, Office of the Secretary, National Appeals Division, (at times NAD).

Notwithstanding the favorable ruling, facts of which will be set out with more particularity below, Rocky Creek has not received payment because the agency has not implemented the ruling as required by law.

3. In 2017 Rocky Creek was a grower of row crops including seedless watermelons. Plaintiff suffered losses to its watermelon crop due to excessive moisture and made a claim for benefits under the Noninsured Crop Disaster Assistance Program administered by the agency. Rocky Creek was denied benefits by the agency. The plaintiff appealed the decision of the agency to its National Appeals Division.

4. The defendant is the United States Secretary of Agriculture, the Honorable George Ervin "Sonny" Perdue, III, United States Department of Agriculture, (the agency), bearing the legal responsibility to implement the decision of the National Appeals Division within 30 days of the favorable ruling which occurred on April 22, 2019 unless a timely request for review is filed which did not occur. The agency has not implemented the decision as of the date of this filing.

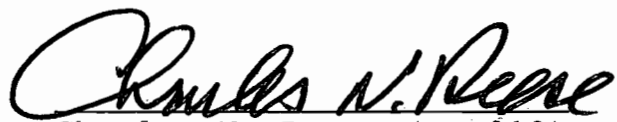
5. The amount that is due Rocky Creek is readily calculable by the agency. Rocky Creek has a clear legal right to the relief sought. Since Rocky Creek is entitled, pursuant to the Non-Insured Crop Disaster Assistance Program (NAP), to a readily calculable amount for its losses there is no need to remand this matter to the agency prior to judgment being entered.

6. The plaintiff filed a timely appeal from the agency's decision of May 10, 2018 that denied benefits under the program. On appeal from that decision the administrative law judge found the disapproval of Rocky Creek's claim for benefits was in error and not supported by the evidence. No request for review has been filed by the agency, the period for filing a request for review has expired and the NAD ruling is final. The final ruling was entered on April 22, 2019.

7. The agency's failure to implement the final determination of the Administrative Law Judge even though more than thirty days has elapsed from the effective date of the final determination and the agency's failure to pay the claim under the program is arbitrary, capricious and contrary to law.

Wherefore Plaintiff seeks an order:

- A. Enforcing the ruling of the Administrative Law Judge entered on 22nd day of April 2018;
- B. That the Agency be required to calculate and provide the calculations of the benefits due Rocky Creek as a result of the ruling of the Administrative Law Judge;
- C. That the Agency be required to pay statutory interest on the sums due under the Ruling of the Administrative Law Judge;
- D. That the Court enter judgment for the benefits due as a result of the ruling of the Administrative Law Judge and interest.



Charles N. Reese (REE010)
Attorney for Plaintiffs
P. O. Drawer 250
1 Old Town Square
Daleville, Alabama
36322
cnevillereese@mac.com
334-598-6321
334-598-4216 (facsimile)